

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1983

JUN 4 1984

PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

CHARLES R. CARNEY,

Respondent.

ON WRIT OF CERTIORARI TO THE
CALIFORNIA SUPREME COURT

JOINT APPENDIX

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JOINT APPENDIX

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CHRONOLOGICAL LIST OF DATES
ON PLEADINGS FILED; HEARINGS
HELD, AND ORDERS ENTERED
(Superior Court Docket
Sheets not in record)

SUPERIOR COURT OF THE STATE OF
CALIFORNIA IN AND FOR THE COUNTY
OF SAN DIEGO

People v. Charles Richard Carney,
No. Cr 47927

DATE	PROCEEDINGS
9/14/79	Information filed.
9/19/79	Carney pleads not guilty.
10/5/79	Carney files motion to suppress evidence.
10/19/79	Parties stipulate to preliminary hearing transcript being considered by court. Motion to suppress denied.
11/5/79	Carney changes plea to nolo contendere.

JA-2

1/14/80

Order granting probation entered.

1/22/80

Notice of appeal from denial of suppression motion filed.

COURT OF APPEAL FOR THE STATE
OF CALIFORNIA,

FOURTH APPELLATE DISTRICT,
DIVISION ONE

People v. Charles Richard Carney

4 Crim. 11637

(Superior Court No. 47927)

Date

Proceeding

3/18/81

Judgment affirmed.

SUPREME COURT OF THE STATE
OF CALIFORNIA

People v. Charles Richard Carney

Crim. 22047

(Superior Court No. Cr 47927)

Date

Proceedings

6/10/81

Hearing granted.

9/8/83

Order of probation
reversed and case
remanded to allow
Carney to withdraw
his plea.

before the filing of this Information,
the following crime(s):

COUNT ONE: On or about May 31,
1979, CHARLES RICHARD CARNEY did
unlawfully possess marijuana for sale, in
violation of Health and Safety Code sec-
tion 11359.

DATED: September 14, 1979

EDWIN L. MILLER, JR.
District Attorney
COUNTY OF SAN DIEGO
STATE OF CALIFORNIA

By: William H. Kennedy
Assistant District
Attorney

[Clerk's Transcript p. 41]

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

DATE: October 19, 1979

MINUTES DEPT: TWENTY-SEVEN

PRESENT: HON. WILLIAM T. LOW

CLERK: EUGENE M. HORA

REPORTER:

BAILIFF:

CR-47927-

DA A37492

People of the State of California vs.

CHARLES RICHARD CARNEY

James E. Hamilton, Esq.

Deputy Dist. Attorney

George Haverstick, Esq.

MINUTE ORDER

By direction of the Court.

The Court finds as follows:

1. Officer Williams had probable cause to arrest for felony sex and

narcotic offenses and a reasonable belief that the Dodge motorhome contained contraband based on the anonymous phone calls, information from WETIP and the juvenile's statement. The officer's observations corroborated the information.

2. A search of the motorhome was authorized. Where there is probable cause to search the vehicle there is no requirement of withholding an immediate search and holding the car until a magistrate issues a search warrant. Chambers v. Maroney, 399 U.S. 42; People v. Hill 12 Cal.3d 731; People v. Dumas, 9 Cal.3d 871.

3. Since the crimes were committed in the motorhome itself, the vehicle could be seized as evidence of the crime. North v. Superior Court,

8 Cal.3d 301, 305; People v. Rodgers, 21
Cal.3d 542, 549.

4. The defendant's motions
based on Penal Code 1538.5 and 995 are
denied.

emh

RELEVANT MATERIAL FROM REPORTER'S
TRANSCRIPT

[Reporter's Transcript pp. 6-8]

Excerpts from Deputy District Attorney's
Direct Examination of Arresting Officer

[Deputy District Attorney Dubow's
Direct Examination of Agent Williams]

Q Now, Agent Williams, you indicated that you saw Mr. Carney on the 31st of May, 1979. Were you looking for him?

A No, Sir, I didn't have any idea who he was at that time.

Q What brought your attention to him?

A He did not look like he fit in the area there, and he was approaching a Mexican boy and talking to him.

Q So what did you do?

A Well, I didn't do

anything. I kind of kept an eye on him while he just happened to be in the same area of the other surveillance.

Q What did you do after you finished watching him, Mr. Carney?

A Well, when I first observed Mr. Carney I believe he was right at 4th Street, and the next time I observed him I had walked down a block and he was -- he had moved down in front of the restaurant. I think that's at 3rd Street and Broadway, or a block behind the little park there. He was standing on the corner, and he was kind of looking at me and talking to the boy at the same time. I was watching somebody who had walked south on 3rd Street, so I was standing right next to him.

Q Did you see where Mr. Carney and this boy went?

A Well, I went down the

street following the people, the original people, along with Agent Peralta.

MR. HAVERSTICK: I object, nonresponsive.

THE COURT: Yes, sustained.

BY MR. DUBOW

Q Where did you see the defendant go with this boy?

A I didn't see where they went at that time. I walked away from them at that immediate time.

Q Did you see him again?

A Yes.

Q When was that?

A Approximately five minutes later, I am guessing.

Q Where did you see him again?

A I saw him walking in the area of -- I believe it was -- Let's see, 4th and "G," near the parking lot which

we had walked up toward. We saw him coming down that area of the street.

Q Did you see where they went?

A Yes. We watched them go into a parking lot, and they walked over to a Dodge mini motor home and they both got into it.

Then we walked over and got the license plate and saw that it was on information that we had received from WETIP stating that this man had taken the place of the person we were following and dealing narcotics.

[Reporter's Transcript p. 10]

Q Did you notice anything unusual occur inside the camper?

A Yes, I saw the man in the brown leather jacket, later identified as Carney, going up and closing the -- well,

in a mini motor home you have curtains that come around across the front windshield. I saw him closing those. And all the other -- the majority of the rest of them had already been closed or were closed after that.

[Reporter's Transcript p. 15]

Q Approximately how long after you had observed the drapes or the curtains to be drawn was it before you saw either the boy or the man again?

A Approximately an hour and 15 minutes.

[Reporter's Transcript p. 17]

Q A boy came out; is that correct?

A Yes, Sir.

[Reporter's Transcript p. 18]

Q Then what happened?

A Then I waited until he stepped -- he walked a little easterly over to the street there, which is, I guess, 3rd Street. And then he walked north on 3rd and I came up behind him and I stopped him and identified myself along with Agent Clem, and, I think, Agent Peralta at that time.

Q What did you do after identifying yourself?

A We asked him what he had been doing in the motor home. We told him we were on a narcotics investigation.

[Reporter's Transcript p. 22]

Q Officer, what did this boy tell you that occurred 'n that van?

A Well, he stated that he had been -- the man -- the older man had asked him to have sex with him and had

given him a small bag of marijuana. And then he had allowed this older man to perform oral sex on him.

[Reporter's Transcript pp. 23-24]

Q Based on what he told you and the WETIP letter and the anonymous phone calls and your observations, what did you do?

A We had the young boy go back and knock on the door and ask him to step outside.

Q Did the young boy do this?

A Yes, he did.

Q What happened when he knocked on the door?

A Well, Mr. Carney opened the door, and, of course, he had to step down a step anyway, so he was just a step from stepping outside to open the door.

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And we identified ourselves as police and federal officers, and he stepped down.

At that time Agent Clem stepped one step up and looked inside to see if anybody else was in there.

He stepped back out and he said, "There is marijuana and all kinds of paraphernalia laying on the table right inside the doorway."

[Reporter's Transcript p. 35]

Q Now, I show you People's 3 marked for identification. Do you recognize what People's 3 depicts?

A Yes, sir. I cannot tell exactly what everything is from the picture. I would have to refresh to see what type of bags they were. This is the first -- the first one on the left side is the passenger side cupboard over

this table that the other picture was of.
This is over it.

The right-hand picture is the cabover, which is above the driver and the passenger. It is the bunk that sits over the cab.

Q All right. What is the bottom picture?

A That is the picture of the refrigerator and the exhibits that were found in there.

Q Do those photographs accurately depict your observations?

A Well, yes, they are not -- you know you can't tell exactly how much of everything is there from the pictures, but, yes, what we saw when we opened them up and as we were taking -- pulling stuff out.

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[Reporter's Transcript pp. 62-64]

Excerpts from Defense Counsel's Cross-
Examination of Arresting Officer.

[Attorney Haverstick's Cross-
Examination of Agent Williams]

Q And did the young man then
do what you had told him to do?

A Yes, sir.

Q And what did he do?

A He knocked on the door.

Q And that is what you had
told him to do for you, isn't it?

A We had asked him if he was
willing to be a witness and if he would
do that, yes.

Q Who had come up with the
idea of his knocking on the door? Did
you or did he?

A I did.

Q Did someone answer the
door?

A Yes, sir.

Q Would you explain what happened? Did someone come to the door, or exactly what did you see next?

A The door came open. Mr. Carney stepped down to one step before the ground there, and we identified ourselves to him.

Q At that point when you say, "one step before the ground," was he on the inside of the door at that point?

A His feet were, yes.

Q Did he then step outside?

A Yes, sir.

Q And prior to his stepping outside did you tell him to do something?

A Possibly, yes, very possibly, we asked him to step out. I don't remember for sure that we asked him to step out, but -- whether he stepped

/

voluntarily or we asked him, I don't remember.

Q Did you then ask him to face you?

A I don't remember that per se, no.

Q Well, what was Mr. Carney's position at the time that Agent Clem stepped into the vehicle?

A I believe as Mr. Carney stepped out, Agent Clem stepped up on the steps, looked in, and stepped back out and told me what was observed, to the best of my knowledge.

Q And the first step is inside the van, is it not?

A Yes, sir. Well

Q In other words, there is an exterior door on the van, is there not?

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A Yes, it is probably an exterior step that would be outside the van. Whether it was down or not, I don't know. From what I remember, Agent Clem stepped in where the door would have locked, stepped on that step and looked in.

Q So he had his body and feet inside the van at that time when he looked, did he not?

A I believe so. You would have to ask Agent Clem.

Excerpts from Deputy District Attorney's
Direct Examination of Officer.

[Deputy District Attorney
Dubow's Direct Examination of Agent Clem]

[Reporter's Transcript p. 72]

Q What did you do when the defendant answered the door?

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A The first thing, I identified myself as a police officer. The defendant then stepped down out of the motor home at about the same time I stepped in the motor home to check to see if there were any other occupants of the vehicle.

Q Now, why did you do that?

A Safety reasons, to see if anybody else was in there.

NOTE REGARDING THE JUDGMENT OF THE
CALIFORNIA SUPREME COURT

The opinion and judgment of the California Supreme Court in People v. Charles R. Carney, Crim. No. 22047 (Superior Ct. No. CR 47927) is contained in the Appendix to the Petition for Writ of Certiorari at pages A-1 through A-52.

AFFIDAVIT OF SERVICE BY MAIL

Attorney:

No: 83-859
October Term, 1983

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PEOPLE OF THE STATE OF
CALIFORNIA,

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v.

110 West A Street, Suite 700
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CHARLES R. CARNEY,

Respondent.

I, THE UNDERSIGNED, say: I am a citizen of the United States, am 18 years of age or over, employed in the County of San Diego in which County the below stated mailing occurred, and not a party to the subject cause, my business address being 110 West A Street, Suite 700, San Diego, California 92101.

I have served the within JOINT APPENDIX as follows: To Alexander L. Stevas, Clerk, Supreme Court of the United States, Washington, D.C. 20543, an original and 3 copies, of which a true and correct copy of the document filed in this cause is hereunto affixed; AND, by placing three copies in a separate envelope addressed for and to each addressee named as follows:

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FOR DELIVERY TO:

Hon. William T. Low, Judge.

Each envelope was then sealed and with the postage prepaid deposited in the United States Mail by me at San Diego, California on the 1 day of June 1984.

There is a delivery service by United States Mail at each place so addressed or regular communication by United States Mail between the place of mailing and each place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California, June 1, 1984.

Subscribed and sworn to before me
this 1st day of June 1984.

Vida M. Allen

Notary Public in and for said County and State

Clifford E. Reed, Jr.
CLIFFORD E. REED, JR.



VIDA M. ALLEN
NOTARY PUBLIC—CALIFORNIA
COUNTY OF SAN DIEGO

My commission expires Aug. 20, 1987